

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
POLICY AND PROCEDURES MANUAL**

INFORMAL AND PRE- HEARING CONFERENCES

P&P C-20
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AUTHORITY: Labor Code Sec. 6308.5 and 6319(g).

POLICY: It is the policy of the Division of Occupational Safety and Health to encourage any employer who has been issued a citation or notice, or another affected person, to participate in an informal conference with Division personnel and discuss any evidence which affects the existence of the alleged violative condition, the classification of the alleged violation and/or the Division's calculation of the proposed civil penalty in order to promote, if possible, resolution of any issues of disagreement between the employer, or another affected person, and the Division. It is also the policy of the Division to be prepared to fully participate in a pre-hearing conference initiated by the Occupational Safety and Health Appeals Board.

PROCEDURES:

A. NOTIFICATION OF THE AVAILABILITY OF AN INFORMAL CONFERENCE

1. Citation

All citations (Cal/OSHA 2) issued by a District Office shall be stamped in red ink with the words "Informal Conference Available--Contact the Cal/OSHA District Office Listed on the Citation."

2. Closing Conference

At the Closing Conference, compliance personnel shall inform the employer that:

- a. The informal conference is an opportunity to discuss the inspection and the citation or notice issued as a result of the

- inspection, including the existence of the alleged violative condition(s), the classification of the alleged violative condition(s) and the Division's calculation of the proposed civil penalty; and
- b. The employer is encouraged to request an informal conference with the District Manager anytime prior to the day of the hearing.

B. EMPLOYER REQUEST FOR AN INFORMAL CONFERENCE

1. How to Conduct an Informal Conference

A District Manager, or his or her designee, shall conduct each informal conference by means of face-to-face contact between the District Manager, the employer or employer representative(s), and/or employee(s) or employee representative(s). All parties participating in the informal conference shall be situated at the same physical location in order to ensure equal access to any evidentiary material presented during the informal conference.

EXCEPTION: An informal conference may be conducted by means of telephonic contact between the District Manager, the employer or employer representative(s), and/or employee(s) or employee representative(s), if both of the following conditions are fulfilled:

- a. one or more of the participating parties are geographically remote, i.e., their place of business is greater than one hundred (100) miles from the District Office as measured by driving to the District Office from the party's place of business; and
- b. the District Manager, or his or her designee, who conducts the informal conference receives prior approval from the Regional Manager to conduct the informal conference by telephone.

2. Granting Requests

The District Manager shall give any affected employer, or another affected person, the opportunity for an informal conference.

3. Timing

a. No Appeal Filed

1. If the employer has not filed an appeal, the informal conference shall be held no more than 10 working days following issuance of the Citation and Notification of

Penalty in order to ensure an expeditious resolution of any issues.

NOTE: Informal conferences shall be conducted prior to the deadline for the employer to file an appeal of the citations issued. In the event an informal conference cannot be held within the 10 working day period, the District Manager, or his or her designee, shall telephone the employer to explain the employer's 15- day right to appeal, document the reasons in the case file why an informal conference cannot be held within the 10 working day period, and schedule an informal conference at the Division's and the employer's earliest opportunity.

2. The District Manager, or his or her designee, shall advise the requesting employer by letter of the following: See Attachment B.
 - a. Date, time and location of the informal conference;
 - b. The occurrence of the informal conference does not extend the fifteen (15) day time period that the employer has to file an appeal with the Occupational Safety and Health Appeals Board;
 - c. Participation by the employer, an employee or an employee's representative in an informal conference does not expand or diminish the rights of the employer, the employee or the employee's representative in a proceeding before the Occupational Safety and Health Appeals Board; and
 - d. That it is the responsibility of the employer to notify affected employees, or their representatives, of the date, time and location of the informal conference and to encourage them to attend, or be available for telephone conferencing when an informal conference is held by telephone.

NOTE: If the employer objects to the attendance or participation of another person, separate informal conferences shall be held. During an informal conference, separate or private discussions or telephonic contact shall be permitted if any person requests such discussions.

b. Appeal Filed

1. If the requesting employer has filed an appeal with the Occupational Safety and Health Appeals Board, the District Manager, or his or her designee, shall conduct the informal conference as soon as possible after the employer requests a conference, but a conference can be held anytime prior to the day of the hearing.
2. The District Manager shall advise the requesting employer by letter of the following: See Attachment B.
 - a. Date, time and location of the informal conference;
 - b. Participation by the employer, an employee or an employee's representative in an informal conference does not expand or diminish the rights of the employer, the employee or the employee's representative in a proceeding before the Occupational Safety and Health Appeals Board; and
 - c. That it is the responsibility of the employer to notify any affected employees, or their representative, of the date, time and location of the informal conference and to encourage them to attend.

NOTE: If the employer objects to the attendance of another person, separate informal conferences shall be held. During an informal conference, separate or private discussions shall be permitted if any person requests such discussions.

C. PREPARATION FOR AN INFORMAL CONFERENCE

1. Compliance Personnel

Compliance personnel who participated in the inspection on which any enforcement action was based shall review the documentation of the alleged violation(s) and the proposed penalty calculations in the inspection file and consult with the District Manager about any evidentiary issues prior to attending an informal conference with the employer.

2. District Manager

The District Manager whose office issued the enforcement documents shall also review the documentation of the alleged violation(s) and the proposed penalty calculations with appropriate compliance personnel prior to attending an informal conference with the employer.

3. Regional Seniors

At the request of the Regional or District Manager, the Regional Senior Safety Engineer and Industrial Hygienist shall provide technical assistance during the informal conference.

D. SCOPE OF AN INFORMAL CONFERENCE

1. Opportunity to Present Evidence, Offer Explanations and Clarify Issues

a. Employer

An informal conference also allows the employer a chance to present the employer's "side of the story," including any evidence which indicates that no violation existed, that the proposed penalties are inappropriate, and to ask any questions concerning the inspection process or the citation or notice.

b. Division

1. An informal conference represents an opportunity for the District Manager, or his or her designee, to receive any evidence the employer wishes to offer and to clarify any issues that the employer may have about the inspection, the existence of the violation(s) and the amount and appropriateness of the proposed penalties.
2. The District Manager, or his or her designee, shall approach the informal conference with an open mind in order to promote, if possible, resolution of any issues of disagreement between the employer and the Division.

2. Timeframe for Amending or Withdrawing

a. After Issuance, But Before Expiration of the Appeal Period

Anytime between issuance of a citation or notice and prior to the expiration of fifteen (15) working days given to an employer to file an appeal of the Division's citation, the District Manager may amend a citation to make changes in the violation(s), violation classification, proposed penalties or abatement dates, or to withdraw a citation.

NOTE: If the District Manager discovers that the employer has filed an appeal and the appeal has been docketed, the District Manager shall request Legal Unit assistance to amend the citation.

b. After Expiration of the Appeal Period

1. When No Appeal Filed

If, after the fifteen (15) working days have expired, the employer has not appealed the Division's citation and the Division determines that amendment of the citation may be necessary, the District Manager shall contact the Legal Unit for assistance.

2. When Appeal Filed and Docketed

If it is necessary to amend a citation after the Occupational Safety and Health Appeals Board has docketed the employer's appeal, the District Manager shall arrange for citations to be amended or withdrawn by requesting Legal Unit assistance, or, if a prehearing conference has or will be held, requesting an order from the Administrative Law Judge during the prehearing conference.

3. Informing Employer of Results of Informal Conference

After determining what, if any, action is to be taken as a result of the informal conference, the District Manager shall inform the employer before the appeal deadline expires if an appeal has not been filed and as soon as possible if an appeal has been filed.

4. Issuing Amended or Withdrawn Citations After Informal Conference

a. No Appeal Filed

1. When amending or withdrawing a citation or notice as a result of an informal conference, the District Manager shall follow the procedures for amending or withdrawing a citation found in P&P C-2, Section A.3. The District Manager shall send a copy of the amended citation to Accounting.

NOTE: If the employer objects to a notice item and wants to appeal the item, the District Manager shall

remove the item from the notice, issue a citation and appropriate penalty in place of the notice item, and send a copy of the citation to Accounting.

2. Any amended enforcement documents shall be sent via Certified Mail--Return Receipt Requested to the employer and a copy filed in the inspection file.

b. Appeal Filed and Docketed

When amending or withdrawing a citation or notice as a result of an informal conference after an appeal has been filed and docketed, the District Manager shall request Legal Unit assistance to amend the citation.

NOTE: When requesting Legal Unit assistance in amending citations or other enforcement documents, the District Manager shall send to the Legal Unit a copy of the specific amendments sought, together with a statement of the reason(s) for the amendments and a copy of the completed Cal/OSHA 20.

E. DOCUMENTING AN INFORMAL CONFERENCE

The District Manager, or his or her designee, conducting the informal conference shall document on the Cal/OSHA 20 the name of the employer who requested the conference, the date of the conference, the persons who participated in the conference, the issues discussed during the conference and the results of the conference, and reasons for changes made to citations, penalties, etc. See Attachment A.

F. PRE-HEARING CONFERENCE

1. Scope

The Occupational Safety and Health Appeals Board usually schedules a pre-hearing conference to simplify the issues which will be presented at the administrative hearing.

2. Preparation

District Managers and compliance personnel shall be prepared to fully participate in any pre-hearing conference involving enforcement actions issued by them.

3. Changes to Enforcement Action

The scope of a pre-hearing conference is the same as the informal conference with reference to permissible changes to the Division's enforcement action.

4. Orders Issued by the ALJ

The District Manager shall comply with any pre-hearing order issued by the Appeals Board during or as a result of a pre-hearing conference.

G. REASONS FOR AMENDING OR WITHDRAWING CITATIONS AND CIVIL PENALTIES AS A RESULT OF AN INFORMAL OR PRE-HEARING CONFERENCE

1. Change in Violation(s)

Based upon the evidence presented at an informal or pre-hearing conference by the employer, or based upon a review of evidence held by the Division, the District Manager may amend or make a motion to amend a citation to change either the section number(s) cited or the description of alleged violation(s).

2. Change in Violation Classification

Based upon the evidence presented at an informal or pre-hearing conference by the employer, or based upon a review of evidence held by the Division, the District Manager may amend or make a motion to amend a citation to change the classification of the alleged violation(s).

3. Change in Proposed Penalties

a. Change in Penalty Amount

1. Initiated by Division

a. Based upon the evidence presented at an informal or pre-hearing conference by the employer, or based upon a review of evidence held by the Division, the District Manager may amend a citation to change the amount of the proposed penalty.

b. With the exception of civil penalties mandated by statute, the District Manager may withdraw proposed civil penalties in their entirety if the employer is no longer conducting business operations, provided that there is not a successor business entity and the

employer is not conducting business operations under a different name.

NOTE: The District Manager may contact the Bureau of Investigations if they need assistance in determining the existence of a successor business entity or whether the employer is conducting business operations under a different name.

2. Initiated by Appeals Board

a. Appeals Board Orders

The Appeals Board may be in a position to grant greater relief than the Division can with reference to proposed civil penalties in the following situations:

- i. For civil penalties mandated by statute, the Appeals Board may issue an order, which the Division will not generally oppose, to vacate the civil penalties in their entirety if the employer is no longer conducting business operations, provided that there is no successor business entity and the employer is not conducting business operations under a different name.
- ii. The Appeals Board may issue an order reducing civil penalties in an amount greater than the Division can under the provisions of 8 CCR Sec. 336 if the Appeals Board determines that assessment of the civil penalties would threaten the viability of the employer as an ongoing business operation.

b. Division Response To Appeals Board Order Reducing Civil Penalties

- i. When the Occupational Safety and Health Appeals Board reduces civil penalties in either situation described in Section G.3.a.(2)(a)(1) or (2) above, Division representatives shall request that the employer subject to the penalty reduction shall be required to, in addition to any oral representations, provide written documentation of either the cessation of business operations or the threat to ongoing

business operations posed by the assessment of civil penalties.

- ii. Written documentation may include the following:
 - I. A profit or loss statement audited by a certified public accountant;
 - II. Reliable documentary evidence pertaining to recent financial history of the employer; or
 - III. Federal and State income tax returns pertaining to the employer's business.
- iii. Although the Division will not engage in a detailed analysis of any financial documents or information submitted by the employer, the District Manager shall be prepared to comment upon the overall adequacy of the documentary evidence.

NOTE: If the Division representative(s) decide the submitted financial information is not adequate to support a reduction in civil penalties, the Division representatives shall object to a proposed order by the Appeals Board which either sets aside the civil penalties in their entirety or excessively reduces the civil penalty, in a manner not commensurate with the documentary evidence submitted.

4. Changes in Abatement Dates

Based upon the evidence presented at an informal or pre-hearing conference by the employer, or based upon a review of evidence held by the Division, the District Manager may amend a citation or Notice or make a motion to amend a citation to extend the date for abatement.

5. Withdrawal of a Violation

- a. Based upon evidence presented at an informal or pre-hearing conference by the employer, or based upon a review of evidence held by the Division indicating that a violation may not be sustained, the District Manager may withdraw or make a motion to withdraw the violation. At the informal conference, the violation may only be withdrawn if it has not become a final order of the Occupational Safety and Health Appeals Board.
- b. If the citation has become a Final Order of the Appeals Board, the District Manager shall request Legal Unit assistance to withdraw the citation.

Attachments:

A -- [Cal/OSHA 20](#)

B -- [Sample Letter](#) Notifying Employer of Informal Conference